

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Criminal Case No. 07-20283

Marcus Deangelo Lewis,

Honorable Sean F. Cox

Defendant.

**ORDER NOTIFYING DEFENDANT OF RECHARACTERIZATION AND DIRECTING
DEFENDANT TO FILE MEMORANDUM**

Defendant Marcus Deangelo Lewis (“Lewis”) pleaded guilty to Counts One and Two of the Superceding Indictment. This Court sentenced Defendants on May 20, 2009.

Lewis filed an appeal on November 22, 2011, which was denied in an Opinion & Order issued on October 31, 2012.

Acting *pro se*, Lewis filed a “Motion For Correction Of Presentence Investigation Worksheet C” (Docket Entry No 393) on July 18, 2014, in which he asks this Court to vacate his sentence and then re-sentence him.

Although Lewis’s motion is not titled as such, the relief requested is consistent with a motion to vacate sentence under 28 U.S.C. § 2255 and is therefore the equivalent of a petition under § 2255. Before characterizing Lewis’s motion as a § 2255 motion, however, Lewis must be given the opportunity to withdraw the filing. *See In re Shelton*, 295 F.3d 620, 622 (6th Cir. 2002). This is because “[a]n unintended byproduct of [liberally construing *pro se* filings as § 2255 petitions] . . . is that it may effectively deprive an uninformed *pro se* litigant of the future

opportunity to file a motion to vacate his sentence under § 2255.” *Id.* at 621. After a prisoner files one motion under § 2255, the Antiterrorism and Effective Death Penalty Act generally prevents a prisoner from filing a second or successive § 2255 motion. Thus, the prisoners must be aware that the Court’s construction of their petition may limit their ability to pursue future avenues of collateral relief and must be given the opportunity to either agree with the Court’s construction or withdraw their motion.

Accordingly, **Lewis is hereby NOTIFIED that the Court intends to construe his July 18, 2014 motion as a motion for relief under 28 U.S.C. § 2255.**

Lewis is **ORDERED** to file a one-page memorandum on or before **November 30, 2014**, indicating whether he agrees with the Court’s intended characterization of his motion or if he intends to withdraw it. In the event that Lewis does not file a memorandum on or before that date, Lewis’s motion will be deemed a motion under § 2255.

IT IS SO ORDERED.

Dated: October 20, 2014

S/ Sean F. Cox

Sean F. Cox
U. S. District Judge

I hereby certify that on October 20, 2014, the foregoing document was served on counsel of record via electronic means and upon Marcus Deangelo Lewis via First Class mail at the address below:

Marcus Deangelo Lewis #12882-039
FCI Milan
P. O. Box 1000
Milan, MI 48160

S/ Jennifer McCoy
Case Manager